

The circumstance that there are precedents of civil and criminal cases in which foreign juries have been ordered furnishes no precedent to be followed except in one respect, that is, that courts in proper cases have ordered foreign juries. So after all, the single question is, can a fair and impartial trial be had before a jury of Somerset County? The State claims that so far as it is concerned a fair and impartial trial cannot be had. To sustain its contention it urges, first, that the Sheriff of Somerset County is hostile to the interest of the State in its prosecution of the defendants. In support of this charge is an affidavit of Mr. Bergen, the prosecutor, who says he met the Sheriff on September 15th, 1926, in the Somerset County Court House, and was asked by that official if the Grand Jury was meeting, and when informed that it was the Sheriff said "that it was very funny he had not been told about it officially, that there were no constables of his there and that he would have nothing to do with it," and that he refused later to speak to him (Mr. Bergen). We cannot perceive anything in what the Sheriff said or in his feeling indignant because he was ignored in the performance of an official act, that allows a permissible inference that he was or would be hostile to the interests of the State. For it must be borne in mind it was this Grand Jury which he had participated in summoning for the April Term which found the indictments for murder against the defendants.

Another affidavit in support of the charge is that of John Underwood, an inspector of the Police Department of the City of Jersey City, who has been investigating the case for the State. Mr. Underwood makes the general statement that the Sheriff has taken no pains to conceal his displeasure at the investigation being made; that on the day the Grand Jury met he practically ordered the Special Prosecutor out of his office; that he ordered one of his investigators from his office; that he was a member of the Grand Jury which found no bill against the defendants four years ago and "that he has expressed himself to divers persons as being personally affronted because of the investigation now going on of this homicide", etc.

It must be observed that all his averments are conspicuous for their generality. He makes no effort to name any one to whom the sheriff has expressed himself as hostile to the investigation or to the State's interest. On the other hand the Sheriff in an affidavit denies the statements made by Mr. Underwood and denies that he has ever expressed himself as hostile to the State's interest and that he has been and is faithful and loyal to the State's interest.

The only other affidavit relied on by the State to establish the alleged hostility of the Sheriff is that of William L. Thompson, who says that a Mr. Garretson in discussing the proposal of a foreign petit or trial jury denounced it as a slur against the integrity of the citizenry of Somerset County, and that Garretson is a member of the Grand Jury drawn for the 21st of September 1926, is the County Treasurer and is a Republican. In what manner this evinces hostility on the part of the Sheriff to the State's interest has not been made plain to us. We think the finding of an indictment against the defendants by a Grand Jury in the making up of which the Sheriff participated under the Jury Act, the summoning for the September Term of 250 petit jurors and 160 struck jurors whose competency, fairness and impartiality have not been assailed, are cogent circumstances to repel the charge made against the Sheriff of being hostile to the State's interest.

Much stress was placed by counsel of the State in his